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THE ROLE OF BAIL IN CRIMINAL JUSTICE SYSTEM AND ITS IMPACT ON THE PRESUMPTION OF INNOCENCE - A STUDY

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Introduction:

the role of bail in criminal justice system and its impact on the presumption of innocence - a study is an intricate and disputed issue, with both positive and negative consequences. 'Bail is rule, jail is an exception' is a legal principle that was laid down by the Supreme Court in a landmark judgement of State of Rajasthan v. Balchand alias Baliyain 1978. On one hand, bail serves as a significant instrument to safeguard the appearance of the accused in court and avert flight risk, thereby contributing to upholding law and order. It allows individuals to be released from custody while awaiting trial, enabling them to sufficiently prepare their defence and sustain particular and proficient obligations.

However, the effect of bail on the assumption of innocence, a vital principle of the criminal justice system, has drawn censure. The belief of innocence holds that an accused person is innocent until proven guilty, and bail practices must align with this principle. Inappropriately, the realism often differs.

Object of bail not punitive or preventive but to secure appearance of accused at trial, The object of grant of bail to an accused of an offence is neither punitive nor preventive in nature. The true object behind grant of bail is to secure appearance of accused during trial. Ref. Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830.

In some cases, the nuisance of high bail amounts, particularly for individuals who cannot have enough money it, effectively results in their continued confinement before their trial. This creates a situation where individuals who may be innocent are being punished or feeling adverse significances purely due to their economic

conditions. Such practices can undermine the presumption of innocence by placing probable burden on defendants to plead guilty in order to secure their release or reduce their time spent in pretrial confinement, theoretically leading to unlawful convictions.

Additionally, the bail system may disseminate and aggravate socioeconomic disparities. It excessively impacts downgraded communities, as individuals from low-income backgrounds often face complications in affording bail and safeguarding release, while those with superior monetary possessions can secure their freedom more effortlessly. This unfairly intensifies inequalities in the criminal justice system, where access to wealth stimuli the conduct and conclusions of individuals accused of crimes.

In recent years, there have been calls for bail reform to address these alarms and indorse the principle of presumption of innocence. Some jurisdictions have executed replacements to cash bail, such as risk assessment tools, which evaluate the individual's likelihood to appear in court and their potential threat to public safety. These reforms aim to reduce the reliance on monetary constraints and focus on safeguarding court attendance and public safety while simultaneously conserving the presumption of innocence.

In conclusion, while bail plays a critical role in the criminal justice system, it is vital to ensure that its execution is reliable with the presumption of innocence. Striking the right balance between public safety, fair conduct, and respect for the rights of the accused is imperious. Efforts to reform the bail system are essential to address its

effect on the presumption of innocence and to safeguard justice for all individuals involved in the criminal justice system.

REVIEW OF LITERATURE

A book entitled *BAIL: LAW AND PRACTICE IN INDIA* By Manoj Kumar Sinha, it covers the wide variety of bail jurisprudence in India. The constitutional philosophies and the statutory provisions (section 436, 436A, 437, 437A, 438, 439, 167 etc.) that deal with bail under CrPC 1973 have been widely discussed in nine chapters. The provisions of bail under a few of distinct legislations have also been analysed. The book also inspects provisions from overseas jurisdictions wherever necessary. The changing silhouettes of judicial delimitation through the high courts and the Supreme Court decisions on bail including decisions up to their critical examinations are common thread in the chapters. The recommendations of various reports of the Law Commission of India finds place with a critical study of 268th Report on bail submitted 2017.

A book *Law of Bail* by RK Naroola And Udayan Mukerji, it throws light on that "Bail not jail," as expounded by Justice V R Krishna Iyer, is the central theme of discussion in this publication. Law of Bail, while tracing the history of the concept of bail in India and other jurisdictions, delves into the legislative provisions governing bail. The authors analyse the relevant provisions of the Code of Criminal Procedure, 1973 in the context of legislative changes and judicial clarification accorded to it by the superior courts. The comparative analysis of limitations considered in matters of regular bail and anticipatory bail, especially in view of the new-found rigour with which perpetrators of economic offences are being pursued and prosecuted, has been

presented in a tabular format for ease of reference and understanding. The aim is to review the legislative and judicial developments relating to bail on the anvil of Article 21 of the Constitution of India, which recognises the right to life and personal liberty as a fundamental right.

HYPOTHESES

This research is expected to throw light on personal characteristics of the judge, such as their prior experience or legal background, influence their level of discretion in bail decisions. It also digs deep to critically analyse the effect of defendant's criminal history, including prior convictions or previous instances of failure to appear, affects the judge's exercise of discretion in granting or denying bail. It will also critically evaluate jurisdiction of the court plays a role in the level of discretion exercised by judges in bail determinations.

OBJECTIVES

1. To study the historical evolution of bail practices and its intersection with judicial discretion in safeguarding rights of individuals.
2. It aims to study the critical mechanism of granting the bail and judicial precedent regarding bail in India.
3. It aims to critically analyse the rules and regulations for granting and cancellation of the bail under regular and special acts.
4. It elucidates the law of bail in UK with special reference to Indian criminal justice system.
5. It aims to analyse the active approach for reformation in the view of article 21 of the Indian constitution.
6. It throws light on Legal Safeguard in terms of presumption of innocence in bail matters.
7. It throws light on the role of police and powers of police to grand the bail.

RESEARCH METHODOLOGY

Researcher has considered doctrinal legal research methodology for the research, along with that wherever is needed qualitative-theoretical research methods has been adopted. Whereas, Dr S.R. Myneni has defined, "A doctrinal research means research that has been carried out on a legal proposition or propositions by way of analysing the existing statutory provisions and cases by applying the reasoning power." (Tiwary 2020) on the other hand, Qualitative method involves gathering and analysing non-numerical data, such as interviews, case studies, and observations, to gain a cavernous understanding of the topic. By combining these methods, Researcher can gather comprehensive and steadfast data. MLA 9th edition has been taken into consideration for drafting this research proposal.

DATA COLLECTION

Data collection of this research is highly depending on the following resources.

1. Legal Documents: Collecting data from legal documents such as decrees, regulations, court verdicts, and legal views.

2. Reviews and Criticisms: Managing reviews or feedbacks to collect data on legal ideas, insolences, or practices from individuals or legal authorities.

3. Interviews: Steering talks, meetings with significant stakeholders, such as juries, attorneys, or legal specialists, to gather qualitative data and perceptions.

4. Case Studies: Gathering data from precise legal belongings, including court chronicles, spectator witnesses, and other pertinent documents.

5. Annotations: Witnessing legal proceedings, such as law court hearings or judicial sessions, to collect data on behaviours, relations, or trials.

6. Secondary Data: Analysing present data bases, such as government intelligences, arithmetical databases, or theoretical studies, to extract pertinent material for the research.

LIMITATION(S)

limitations of a research proposal on bail could include:

1. Inadequate access to data: It may be challenging to obtain inclusive and dependable data on bail practices and outcomes, particularly if certain jurisdictions or agencies are not willing to share information.

2. Sample size and representativeness: The research proposal may face limitations in terms of the number of contributors or cases included, which could affect the generalizability of the conclusions.

3. Time restrictions: Conducting thorough research on bail may require substantial time and resources, which may be inadequate within the scope of a research proposal.

4. Ethical restrictions: Research involving human subjects, such as defendants or court personnel, may face moral challenges, including issues related to informed consent and confidentiality.

5. Bias and subjectivity: Research on bail can be influenced by the viewpoints and biases of researchers, which may impact the neutrality of the conclusions.

6. External factors: Bail practices can be influenced by various external factors, such as changes in legislation or public opinion, which may affect the soundness and significance of the research proposal over time.

IMPORTANCE OF THE STUDY

The study of research on bail is important for several reasons. Firstly, it helps to understand the effectiveness and fairness of current bail practices. By examining factors such as pretrial detention rates, bail amounts, and release conditions, researchers can identify potential biases or inequalities in the system. This knowledge can inform policy changes and lead to a more equitable criminal justice system.

Secondly, research on bail can shed light on the impact of pretrial release on various outcomes. It can examine factors such as appearance rates in court, recidivism rates, and the overall efficiency of the criminal justice system. This information can help in developing evidence-based practices that balance public safety with the presumption of innocence.

Lastly, studying bail allows for the exploration of alternative approaches to pretrial release. This includes examining the effectiveness of pretrial services, risk assessment tools, and non-financial release options. By identifying successful alternatives, researchers can contribute to the development of fairer and more effective bail practices.

Overall, the study of research on bail is crucial for promoting fairness, efficiency, and equality within the criminal justice system.

EXPECTED OUTCOME

the role of bail in criminal justice system and its impact on the presumption of innocence - a study aims to examine how present bail practices may affect the essential principle of presumption of innocence. The predictable conclusion of this

research is to provide practical evidence on whether certain aspects of the bail system, such as high bail amounts or inadequate access to pretrial release options, may excessively influence persons' presumption of innocence. By classifying any prejudices or disparities, legislators can work towards executing reforms that ensure the beliefs and rights of innocence is indorsed and protected for all individuals involved in the criminal justice system.

CHAPTER SCHEME

The research has been divided into six fundamental chapters as below,

Chapter- I : Introduction
Chapter- II : Legal Frameworks Relating to Bail in India.
Chapter- III : Critical study of discretion in the matters of bail.
Chapter-IV : Comparative study of UK, USA and India's Judicial system on bail
Chapter- V : Legal Safeguards: Presumption of innocence and Bail Matters.
Chapter- VI : Conclusion

Chapter- I: Introduction

This chapter deals with overall history and origin of bail provision in world. i.e. The idea of bail can be sketched back to 399 B.C. when Plato tried to create a bond for the release of Socrates. The modern system of bail grown from England. In medieval England, the sheriffs originally controlled the sovereign authority to free or detain assumed criminals. Some sheriffs would exploit the bail for their own advantage. The Statute of Westminster (1275) limited the discretion of sheriffs with respect to the bail. Although sheriffs still had the authority to fix the amount of bail required, the statute stipulates which crimes are bailable and which are not.

Chapter- II: Legal Frameworks Relating to Bail in India.

This chapter throws light on all existing laws on bail in India and critically examine their present validity and effectiveness. Bail is defined as provisional release of a person who was suspect in a criminal case and who is still pending a trial in the court. At times to safeguard that the accused would appear before the court when needed, some amount of money is to be paid as a essential condition of bail. It is applicable to anyone who is arrested and can be brought into existence any time after the arrest. Bail is not well-defined in the Criminal Procedure Code, 1973 but bailable and non-bailable offences are demarcated in Section 2(a) of CrPC. The meanings of the terms are as follows: 'Bailable offence means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforce, and non-bailable offence means any other offence.' Bails and bonds are dealt with in chapter XXXIII i.e. section 436 to 450 of the Code of Criminal procedure.

Chapter- III: Critical study of discretion in the matters of bail.

This chapter throws light on the study of discretion in bail matters involves inspecting the factors that effect a judge's verdict to grant or deny bail. It looks at how different judges may interpret and apply the law inversely, leading to discrepancies in bail outcomes. This raises worries about impartiality and the potential for bias in the criminal justice system. Understanding the shades of bail discretion can help identify areas for enhancement and promote more reasonable outcomes.

Chapter-IV: Comparative study of UK, USA and India's Judicial system on bail

This chapter will have comparative studies of UK, USA and India, as judicial systems of the UK, USA, and India have dissimilar methods to safeguarding welfare. Comparing their practices can provide intuitions into how each country addresses social and economic issues within the legal outline. It's important to analyse influences such as access to justice, legal aid, social welfare policies, and the role of the judiciary in promoting the welfare of citizens. Such a comparative study can help identify best practices and areas for enhancement in each system.

Chapter- V: Legal Safeguards: Presumption of innocence and Bail Matters.

this chapter addresses the importance of protecting individuals' rights in the legal system. It specifically discovers the concept of presumption of innocence, which ensures that a person is considered innocent until proven guilty. The chapter also researches into the realm of bail matters, examining how the presumption of innocence applies in the context of defining whether someone should be released on bail or remain in custody while awaiting trial. It aims to provide an all-inclusive empathetic of these legal safeguards within the criminal justice system.

Chapter- V: Conclusion

This chapter deals with the possible conclusion of discretion in bail matters could shed light on potential reforms to promote fairness, consistency, and transparency in the bail process. It may provide valuable insights into the factors that influence judicial decision-making, leading to more equitable outcomes and a stronger criminal justice system.

Note: As research is in progress alternations would be taken into consideration as situation demands.

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